

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 102 of 1999

with

Civil Application No. 1384 of 1999

and

Appeal from Order No. 103 of 1999

with

Civil Application No. 1385 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed :
to see the judgements? Yes
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy :
of the judgement? No
4. Whether this case involves a substantial question :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

AHMEDABAD MUNICIPAL CORPORATION

Versus

RAMESHBHAI GULABRAM MADANI

Appearance:

MR RM CHHAYA for appellant in both appeals.

MR MHM SHAIKH for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 7, 8

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 15/06/1999

COMMON ORAL JUDGEMENT

1. Admitted. Upon the joint request of learned advocates appearing for the parties, the matters are taken up for final hearing today.

2. In both these appeals, appellant - Ahmedabad Municipal Corporation has brought in challenge the common order dated 16.2.1999 recorded below Ex.6 in Civil Suit Nos. 338 of 1999 and 339 of 1999 by learned Aux. Chamber Judge, City Civil Court (Court No.24), Ahmedabad, whereby the learned Judge was pleased to reject the notice of motion which was taken out by the respondents herein, who were the original plaintiffs in Civil Suit Nos. 338 of 1999 and 339 of 1999 and by the said order, the learned Chamber Judge was also pleased to vacate the order for maintaining status quo which was granted earlier and was also further directed the appellant Municipal Corporation to construct latrines, bath rooms and toilets eight feet away from Vallabh Nagar Shopping Centre. Aggrieved by the aforesaid order to keep distance of 8 ft. between the shopping centre and the construction of latrines, bath rooms and toilets under Sulabh International, appellant - Ahmedabad Municipal Corporation has filed these Appeals from Order.

3. The appellant is the original defendant while respondents herein are the original plaintiffs in Civil Suit Nos. 338 of 1999 and 339 of 1999 and for the sake of convenience and brevity, the parties hereafter will be referred to as 'the plaintiffs' and 'the defendant'.

4. Before highlighting the controversy posed for determination of this Court in these appeals, following undisputed facts of the case need narration:

(A) Property known as Vallabh Nagar Shopping Centre is situated near Bapunagar cross roads, Ahmedabad.

(B) Plaintiffs are running business in the said shopping centre and there are also residential flats in the same building.

(C) The property is situated near Bapunagar Char Rasta.

(D) There is 132 ft. wide road on the eastern side of the said property.

(E) The defendant plans to construct latrines, bath-rooms and toilets on the co-operative basis of Sulabh International for the use of the general public.

(F) Previously, Civil Suit No. 153 of 1998 was filed by some of the plaintiffs for similar relief and the plaintiffs moved notice of motion in that suit. In that suit, interim injunction was not granted and notice of motion was dismissed for non-appearance of the plaintiffs, vide order dated 28.4.1998.

(G) In the plaint as well as in the notice of motion before the lower Court, the plaintiffs have suppressed the fact of filing of previous suit.

(H) The plaintiffs have served statutory notice to the defendant Municipal Corporation on 15.1.1999.

(I) The toilets, latrines and bath-rooms to be constructed by defendant Municipal Corporation is on the eastern side of the shopping centre.

(J) The defendant Municipal Corporation has admitted construction of toilets and bath-rooms on the open land on eastern side of the shopping centre. However, distance between the shopping centre and the proposed construction was not mentioned in the affidavit in reply filed by the defendant.

(K) By filing the suit, the plaintiffs have challenged the action of the defendant Corporation in constructing the latrines and bath-rooms in front of their shopping centre.

5. After hearing both the parties, the learned Chamber Judge came to the conclusion that the interim relief which was prayed for by the plaintiffs cannot be granted for various reasons.

(i) Firstly, the plaintiffs have suppressed material fact of filing of previous suit by some of the plaintiffs wherein similar relief was prayed for.

(ii) Secondly, since the plaintiffs served notice under Section 487 of the Bombay Provincial Municipal Corporations Act ('BPMC Act' for short) on 15.1.1999 and the suit was filed on 19.1.1999 i.e., within four days, as per provisions of section 487 (1) of the BPMC Act, the suit was premature as it could not be filed before expiry of one month after service of notice under Section 487 of the BPMC Act.

(iii) Thirdly, there is no evidence that the plaintiffs are running business in the premises since 1970.

(iv) Fourthly, latrines, bath-rooms and toilets are to be constructed on the open land belonging to the Municipal Corporation on the eastern side of the shopping centre where the plaintiffs have no right, title or interest.

(v) Fifthly, since the scheme of construction of Sulabh latrines, bath-rooms and toilets is a welfare activity undertaken by the Corporation, it cannot be stopped as the said facility is very much necessary for the public at large.

(vi) Lastly, the learned Chamber Judge has observed that notwithstanding the shopping centre constructed by the plaintiffs may be unauthorized, the Corporation shall keep a distance of 8 ft. between the shopping centre and the construction of latrines, bath-rooms and toilets.

6. It may be appreciated that the lower Court has not granted any injunction and the notice of motion came to be rejected. However, the appellant Municipal Corporation has preferred these appeals against the direction of the learned Chamber Judge to keep distance of 8 ft. between the shopping centre and the construction of latrines, bath-rooms and toilets, which is objectionable to the Corporation.

7. Learned advocate Mr. Chhaya while appearing for the Municipal Corporation, has vehemently contended that the order passed by the learned Chamber Judge is ex-facie erroneous and illegal because the learned Chamber Judge should not have issued direction to keep distance of 8 ft. between the shopping centre and the construction of latrines, bath-rooms and toilets, while rejecting notice of motion taken out by the plaintiffs/ respondents herein. He then contended that if the order of the learned Chamber Judge is carried out, in that case, it would be impossible for the Corporation to construct latrines, bath-rooms and toilets as there is no space available on the road adjacent to the shopping centre and they have to construct the latrines, bath-rooms and toilets on the Town Planning Road which would be in violation of the Town Planning Scheme and they are ready to construct latrines, bath-rooms and toilets by keeping a distance of 3 ft. from the shopping centre and thereby the Corporation would not be violating rules of the T.P.Scheme and the provisions of the T.P.Act and there would not be any inconvenience to the owners of the shopping centre as well. He lastly contended that the construction of the shopping centre itself is illegal and, therefore, the Corporation has already initiated

proceedings to demolish the same.

8. In counter submission, learned advocate for the respondents submitted that construction of the shopping center may be illegal but that does not create an absolute right to the Corporation to construct Sulabh latrines, bath-rooms and toilets just opposite to the said shopping centre. He further submitted that the learned Chamber Judge has very rightly exercised the powers by directing the appellant to keep a distance of 8 ft. between the shopping centre and the construction and hence the order passed by the learned Chamber Judge is legal and does not require any interference at the hands of this Court in Appeal from Order under Order 43 Rule 1 of the Civil Procedure Code, 1908.

9. After having considered the rival contentions of the learned advocates for the parties and having perused the impugned order of the learned Chamber Judge and on having a look at the maps annexed to the appeal, I am of the opinion that the learned Chamber Judge ought not to have passed the order directing the appellant Municipal Corporation to keep distance of 8 ft. between the shopping centre and the construction while rejecting the notice of motion which was taken out by the plaintiffs. On having perusal of the maps it could be seen that if there is a distance of 3 ft. between the shopping centre and the proposed construction of latrines, bath-rooms and toilets then there would not be any inconvenience to the occupiers and owners of the shopping centre and the construction of the latrines, bath-rooms and toilets would not be on T.P. Road in violation of the rules and regulations of the Town Planning Scheme.

10. In view of the aforesaid discussion, I am of the opinion that the order to keep 8 ft. distance between the shopping centre and the construction is required to be modified and instead of 8 ft. the Corporation should be directed to keep distance of 3 ft. between the proposed construction of Sulabh latrines, bath-rooms and toilets and the shopping centre.

11. In the premise, the appeals succeed in part. The order passed by the learned Chamber Judge to keep distance of 8 ft. between the shopping centre and the construction is modified and instead of that it is ordered that the appellant Municipal Corporation shall keep a distance of 3 ft. between the proposed construction of Sulabh latrines, bath-rooms and toilets and the shopping centre. Accordingly, the appeals are partly allowed to the aforesaid extent. There shall be

no order as to costs.

12. No order on the civil applications.
